

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

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DAVID MATTHEW LAYTON, #751249, §  
§  
Plaintiff, §  
§  
v. § 2:11-CV-0104  
§  
RANDALL C. SIMS, §  
§  
Defendant. §

**ORDER DENYING WITHOUT PREJUDICE DEFENDANT'S MOTION TO DISMISS**

Plaintiff DAVID MATTHEW LAYTON, while a prisoner incarcerated in the custody of the Texas Department of Criminal Justice, Correctional Institutions Division, has filed suit pursuant to Title 42, United States Code, Section 1983 complaining against the above-named defendant and has been granted permission to proceed *in forma pauperis*.

On March 14, 2012 a Report and Recommendation was issued by the United States Magistrate Judge analyzing defendant Sims' motion to dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, as well as plaintiff's responses, and recommending the motion to dismiss be denied without prejudice to defendant re-urging limitations either at trial, in a motion for summary judgment, or in a supplemental motion for summary judgment with all necessary summary judgment evidence included.

The period for response has expired; and no objections have been filed.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation. The Court is of the opinion that

the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

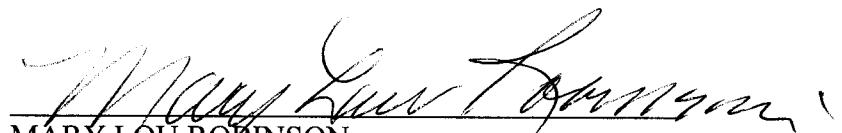
This Court, therefore, does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge in this case.

IT IS THEREFORE ORDERED that the Motion to Dismiss by defendant Sims is DENIED WITHOUT PREJUDICE TO DEFENDANT RE-URGING LIMITATIONS EITHER AT TRIAL, IN A MOTION FOR SUMMARY JUDGMENT, OR IN A SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT WITH ALL NECESSARY SUMMARY JUDGMENT EVIDENCE INCLUDED.

The Clerk will mail a copy of this <sup>ORDER</sup> ~~Judgment~~ to the plaintiff and to each attorney of record by first class mail.

It is SO ORDERED.

Signed this 30<sup>th</sup> day of March, 2012.

  
MARY LOU ROBINSON  
United States District Judge